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C.M., Appellant)	
)	
and)	Docket No. 19-1211
)	Issued: August 5, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Indianapolis, IN, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 6, 2019 appellant filed a timely appeal from an April 1, 2019 merit decision and an April 25, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of disability commencing June 5, 1988, causally related to her accepted August 12, 1987 employment injury; (2) whether OWCP properly adjudicated appellant's request for reconsideration from the denial of her claim for a recurrence of disability before her simultaneous

² 5 U.S.C. § 8101 *et seq.*

request for an oral hearing; and (3) whether OWCP properly denied appellant's request for reconsideration of her termination decision, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth as follows.

On August 13, 1987 appellant, then a 36-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 1987 she sustained an injury to her lower back when she lifted a bag of heavy boxes out of a tub and onto a ledge while in the performance of duty. She stopped work on August 13, 1987. On August 24, 1987 OWCP accepted appellant's claim for low back strain.

In a report dated January 11, 1988, Dr. John L. Beghin, a Board-certified orthopedic surgeon serving as an impartial medical examiner, conducted an examination and determined that appellant no longer had employment-related residuals requiring further medical treatment or work restrictions.

Following a February 29, 1988 notice of proposed termination of compensation, OWCP terminated appellant's wage-loss compensation by decision dated June 1, 1988, finding that the weight of the medical evidence established that her disability resulting from her August 12, 1987 employment injury had ceased on or before June 5, 1988.

On September 14, 1988 appellant appealed to the Board. By decision dated April 24, 1989, the Board found that the weight of the medical opinion evidence established that she had no disability on or after June 5, 1988, causally related to her August 12, 1987 employment injury. The Board therefore affirmed OWCP's June 1, 1988 termination decision.⁴

On February 16, 1990 appellant requested reconsideration of OWCP's April 24, 1989 decision. By decision dated March 20, 1990, OWCP denied modification of its prior decision. Appellant requested reconsideration on July 13, 1990, but by decision dated August 22, 1990 OWCP denied her request. On September 24, 1990 she again requested reconsideration. By decision dated October 30, 1990, OWCP denied appellant's request for reconsideration.

On November 23, 1990 appellant, through her then counsel, appealed to the Board. By decision dated October 31, 1991, the Board affirmed OWCP's March 20, 1990 decision finding that the weight of the medical opinion evidence established that appellant had no disability on or after June 5, 1988, the effective date of the termination of her wage-loss compensation benefits, causally related her August 12, 1987 employment injury. The Board also affirmed OWCP's

³ Docket No. 19-0351 (issued October 31, 1991) and Docket No. 88-1863 (issued April 24, 1989).

⁴ Docket No. 19-1863 (issued April 24, 1989).

August 22 and October 30, 1990 decisions finding that OWCP properly declined to reopen her case for a merit review.⁵

On December 8, 1996 appellant, through her then representative, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. By decision dated January 13, 1997, OWCP's Chief, Branch of Hearings and Review, denied appellant's request. Additions to the case record were thereafter sparse for many years.

In a July 18, 2017 report, Dr. Michael Coscia, a Board-certified orthopedic surgeon, noted that appellant had worsening low back pain for the past three years. He diagnosed back, leg, and neck pain; lumbar stenosis with neurogenic claudication; cervical spondylosis; lumbar spondylosis; and atherosclerosis. Dr. Coscia described the conditions as degenerative osteoarthritis in the joints related to aging processes and opined that the conditions were not related to her employment injury from 30 years ago. He noted that his current findings would not support reopening appellant's work-related injury case. Dr. Coscia explained that the symptoms appellant was experiencing were related to routine lumbar spinal stenosis with lower extremity neurogenic claudication.⁶

On February 12, 2019 appellant filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of disability and the need for medical treatment due to her August 12, 1987 employment injury. She explained that her "pain is ongoing due to my [August 12, 1987] injury, lumbar strain, and back spurs, leg pain included." Appellant further noted that she "never healed" and "suffered since [August 12, 1987]."

In a development letter dated February 25, 2019, OWCP noted that the evidence submitted was insufficient to establish the claimed recurrence. It informed her of the type of factual and medical evidence needed. OWCP provided a questionnaire for her completion. It afforded appellant 30 days to submit the requested evidence.

In a February 28, 2019 report, Dr. Jerry Powell, a Board-certified family practitioner, noted that appellant's 1987 injury occurred due to repetitively lifting up to 70 pounds and repetitively bending and twisting for 18 years. He diagnosed spondylosis with myelopathy and intervertebral

⁵ Docket No. 91-0351 (issued October 31, 1991).

⁶ On July 17, 2017 appellant filed an occupational disease claim (Form CA-2) alleging that in August 1987 she sustained a low back injury while lifting heavy bags in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx701. It initially denied this claim on August 9, 2017 as untimely filed. By decision dated December 12, 2017, an OWCP hearing representative remanded the case as appellant had not been issued a development letter. On January 24, 2018 OWCP denied the claim as the medical evidence failed to establish that appellant's claimed medical condition was causally related to the accepted employment factors. By decision dated May 17, 2018, an OWCP hearing representative remanded the case for doubling of the file with OWCP File No. xxxxxx701. OWCP File No. xxxxxx701 has been combined with the current claim and has been designated the master file. By decision dated July 31, 2018, OWCP found that appellant's claim was untimely filed. By decision dated February 8, 2019, an OWCP hearing representative vacated the prior decision and remanded the case to OWCP. The hearing representative found that OWCP should obtain a complete record of appellant's claim under OWCP File No. xxxxxx390 from the Federal Records Center. The hearing representative also advised appellant that, if she believed she experienced a recurrence of her "August 12, 2017" injury, she should file a notice of recurrence in OWCP File No. xxxxxx390.

disc degeneration, lumbar region; other intervertebral disc degeneration lumbosacral region; other intervertebral disc disorder, lumbar region; intravertebral disc disorders, lumbar region; and intravertebral disc disorders with radiculopathy, lumbosacral region. Regarding causation, Dr. Powell explained that the accepted lumbar injury in 1987 “weakened the supportive structures and stability of the lumbar spine and lumbosacral spine causing instability in the lumbar spine and lumbar sacral spine causing improper function, this condition was never resolved, and is the cause of the accelerating and precipitating the osteoarthritis and degenerative disc disease with radiculopathy which she currently presents with, and is the cause of her worsening conditions that she presents with....” He also indicated that, “the two sedentary positions held after [federal employment] did not appear to contribute, affectively, to the worsening of the previously accepted medical conditions. Patient denies any other injuries or illnesses that could directly relate.” Dr. Powell opined that appellant’s lumbar and lumbosacral degenerative disc disease with radiculopathy and lumbar and lumbosacral osteoarthritis was “precipitated by and is a direct result of the original work-related injury, while bending twisting and lifting up to 70 pounds as her required work duties...”

On March 9, 2019 OWCP received appellant’s completed questionnaire. Appellant explained that she had not returned to work at the employing establishment following the initial employment injury of August 12, 1987. She noted that when she was released to light-duty work for four hours a day and no lifting over 10 pounds, the employing establishment did not have a light-duty position available. Appellant also noted that, following her federal employment, she worked from 1997 to 2008 as a receptionist, sitting only, and nine months from September 2017 to June 2018 as a substitute teacher, sitting and helping students with assignments. She denied any outside sports or activities.

By decision dated April 1, 2019, OWCP denied appellant’s recurrence claim. It explained that pursuant to its procedures, if a formal decision was previously made in a claim determining that a claimant no longer suffers any residuals of the work injury, and the alleged recurrence occurred subsequent to the issuance of the decision, the claimant should refer to the appeal rights accompanying the termination decision. OWCP determined, therefore, that no further action should be taken on the recurrence claim.⁷

In a request dated April 16, 2019, received by OWCP on April 22, 2019, appellant requested reconsideration and also requested an oral hearing before an OWCP hearing representative. She argued that she had continuing employment-related disability for which she had previously received compensation benefits, that the new medical evidence established a recurrence of disability due to her August 12, 1987 employment injury, and that the denial was based on an old report.

By decision dated April 25, 2019, OWCP summarily denied her requests as they were untimely filed and failed to demonstrate clear evidence of error. Although it noted that “the basis for this decision is outlined in the enclosure,” there was no enclosure.

⁷ OWCP explained that appellant’s claim for an occupational disease was considered separately under a separate claim File No. xxxxxx701.

LEGAL PRECEDENT -- ISSUE 1

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁸ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁹ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁰ When, however, the medical evidence establishes that the residuals or *sequelae* of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.¹¹

OWCP’s implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.¹²

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.¹³ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing June 5, 1988, causally related to her accepted August 12, 1987 employment injury.

Initially, the Board finds that the April 1, 2019 OWCP letter constitutes a final merit decision on appellant’s claim for a recurrence of disability. In this letter OWCP explained that

⁸ 20 C.F.R. § 10.5(f); *see J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁹ *See J.R.*, Docket No. 19-0120 (issued September 11, 2019).

¹⁰ *A.P.*, Docket No. 19-0446 (issued July 10, 2019).

¹¹ *Id.*

¹² 20 C.F.R. § 10.5(x).

¹³ *See J.S.*, *supra* note 8.

¹⁴ *Id.*

pursuant to its procedures¹⁵ appellant was precluded from pursuing a recurrence claim because her compensation benefits had been terminated. However, Chapter 1500.3(b)(1)(a) of the Federal (FECA) Procedure Manual provides in part: “The CE [claims examiner] should carefully review the recurrence claim to determine if the claimant is requesting reconsideration rather than claiming a recurrence.... [A] request to reopen the case should address some material change in the employee’s medical condition or employment status.” This suggests that further development may be conducted by OWCP on a recurrence claim following a termination decision. As OWCP sent appellant a development letter on February 25, 2019, which led to the submission of further factual and medical evidence, the Board finds that OWCP properly conducted further development of appellant’s claim, and therefore the April 1, 2019 correspondence is considered a final adverse decision.

The Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP’s last merit decision prior to the Board’s October 31, 1991 decision. The Board previously considered this evidence in its April 24, 1989 and October 31, 1991 merit decisions. Findings made in prior Board decisions are *res judicata*, absent further review by OWCP under section 8128 of FECA.¹⁶

In support of her recurrence claim appellant submitted a February 28, 2019 report from Dr. Powell who diagnosed spondylosis with myelopathy and intervertebral disc degeneration, lumbar region; other intervertebral disc degeneration lumbosacral region; other intervertebral disc disorder, lumbar region; intravertebral disc disorders, lumbar region; and intravertebral disc disorders with radiculopathy, lumbosacral region. The Board notes that none of these diagnoses are accepted conditions. It is appellant’s burden to establish that any additional conditions were causally related to the accepted August 12, 1987 employment injury.¹⁷ Dr. Powell opined that the “accepted lumbar injury 1987 weakened the supportive structures and stability of the lumbar spine and lumbosacral spine causing instability in the lumbar spine and lumbar sacral spine causing improper function, this condition was never resolved, and is the cause of the accelerating and precipitating the osteoarthritis and degenerative disc disease with radiculopathy which she currently presents with, and is the cause of her worsening conditions that she presents with...” He further opined that “[i]n my medical opinion, [appellant’s] lumbar and lumbosacral degenerative disc disease with radiculopathy and lumbar and lumbosacral osteoarthritis was precipitated by and is a direct result of the original work-related injury. While Dr. Powell generally provided a supportive opinion, he failed to provide medical rationale to explain how a 1987 back strain had resulted in “weakened supportive structures” and “spinal instability.” A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment injury physiologically caused or aggravated the diagnosed conditions or a

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (June 2013).

¹⁶ 5 U.S.C. § 8128. *See M.S.*, Docket No. 19-1401 (issued July 8, 2020); *see also M.D.*, Docket No. 20-0007 (issued May 13, 2020); *J.T.*, Docket No. 18-1757 (issued April 19, 2019); *D.B.*, Docket No. 18-0409 (issued October 28, 2019).

¹⁷ *J.W.*, Docket No. 15-0325 (issued October 2, 2015).

resulting recurrence period of disability.¹⁸ The Board also notes that the record contains a significant lack of bridging medical evidence to support Dr. Powell's history of injury and recurrence.¹⁹ The Board therefore finds that his opinion is of limited probative value. This report is of limited probative value and is insufficient to establish appellant's recurrence claim.²⁰

The record also contains a July 18, 2017 report from Dr. Coscia who provided diagnoses and opined that appellant's conditions did not have a relationship with her employment injury from 30 years prior. Dr. Coscia explained that the symptoms appellant was experiencing were related to lumbar spinal stenosis with lower extremity neurogenic claudication. This report does not support appellant's claim as Dr. Coscia opined that her conditions were not work related. The Board has held that medical evidence that negates causal relationship is of no probative value.²¹ Therefore, this evidence is insufficient for appellant to meet her burden of proof to establish her claim.

As noted, a claimant must submit rationalized medical evidence supporting causal relationship between the disabling condition and the accepted employment injury. None of the medical evidence of record provided a discussion of how appellant's accepted August 12, 1987 employment injury caused total disability from work during the period in question. As appellant has not submitted medical evidence establishing a recurrence of disability commencing June 5, 1988, causally related to her accepted employment injury, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."²² Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.²³ A claimant is entitled to a hearing or review of the written record

¹⁸ See *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018); *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

¹⁹ See *J.M.*, Docket No. 17-1688 (issued December 13, 2019).

²⁰ See *H.N.*, Docket No. 18-0501 (issued February 20, 2020); *Alice J. Tysinger*, 51 ECAB 638 (2000); *Barbara J. Warren*, 51 ECAB 413 (2000).

²¹ *M.C.*, Docket No. 19-1074 (issued June 12, 2020); *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

²² 5 U.S.C. § 8124(b)(1).

²³ 20 C.F.R. §§ 10.616, 10.617.

as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.²⁴

The Board has long held that, if there are simultaneous requests for a hearing and for reconsideration, OWCP is to proceed with adjudicating the hearing request before reconsideration.²⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly adjudicated appellant's request for reconsideration from the denial of her claim for a recurrence of disability before her simultaneous request for an oral hearing.

Appellant's hearing request from OWCP's April 1, 2019 denial of her recurrence claim was dated April 16, 2019 and received on April 22, 2019.²⁶ As she filed the hearing request within 30 days of the April 1, 2019 OWCP decision denying her claim for a recurrence of disability, the Board finds that it was timely filed. While appellant also requested reconsideration on April 22, 2019, in keeping with Board precedent, OWCP was to proceed with adjudicating the hearing request before the reconsideration request.²⁷ However, it improperly adjudicated the reconsideration request instead.

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.²⁸ Inasmuch as appellant's hearing request was timely filed, the Board will set aside the decision and remand the case for OWCP to schedule an oral hearing.²⁹

Accordingly, the case must be remanded for OWCP to address appellant's timely hearing request.

²⁴ *Id.* at § 10.616(a).

²⁵ See *Order Remanding Case, J.S.*, Docket No. 14-1203 (issued November 24, 2014); *Order Remanding Case, D.M.*, Docket No. 10-2237 (issued June 28, 2011); see also *Mary E. Schipske*, 43 ECAB 318 (1991); *Mary G. Allen*, 40 ECAB 190 (1988).

²⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1601.4a. (October 2011), which provides: "*Timeliness.* The request is timely if it was mailed (as determined by the postmark or other carrier's date marking) within 30 days of the date of the district office's decision. 20 C.F.R. § 10.616. If the postmark is not legible, the request will be deemed timely unless [OWCP] has kept evidence of date of delivery on the record reflecting that the request is untimely."

²⁷ See *supra* note 25.

²⁸ 20 C.F.R. § 10.616(a).

²⁹ See *J.S. and D.M.*, *supra* note 25.

LEGAL PRECEDENT -- ISSUE 3

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.³⁰ This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.³¹ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).³² Imposition of this one-year filing limitation does not constitute an abuse of discretion.³³

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's application for review is untimely filed, OWCP must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence of error.³⁴ If an application demonstrates clear evidence of error, OWCP will reopen the case for merit review.³⁵

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. It is not enough to merely show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP. To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.³⁶

OWCP procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of

³⁰ 5 U.S.C. § 8128(a); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

³¹ 20 C.F.R. § 10.607(a).

³² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

³³ *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³⁴ *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

³⁵ *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 32 at Chapter 2.1602.5 (February 2016).

³⁶ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

error.³⁷ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.³⁸

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.³⁹ Section 10.126 of Title 20 of the Code of Federal Regulations provides that a decision shall contain findings of fact and a statement of reasons.⁴⁰ The Board has held that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁴¹

ANALYSIS -- ISSUE 3

The Board finds that the case is not in posture for decision.

OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁴² As noted above, section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁴³ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons. As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁴⁴ In the April 25, 2019 decision, OWCP denied appellant's April 22, 2019 reconsideration request, finding it was untimely filed as it was received more than a year following the last merit termination decision dated March 20, 1990,⁴⁵ but failed to analyze the

³⁷ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 32 at Chapter 2.1602.5(a) (February 2016).

³⁸ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

³⁹ 5 U.S.C. § 8124(a).

⁴⁰ 20 C.F.R. § 10.126.

⁴¹ *L.M.*, Docket No. 13-2017 (issued February 21, 2014); *D.E.*, Docket No. 13-1327 (issued January 8, 2014); *L.C.*, Docket No. 12-0978 (issued October 26, 2012); Federal (FECA) Procedure Manual Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

⁴² *See Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *Order Remanding Case, T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607(b).

⁴³ 5 U.S.C. § 8124(a).

⁴⁴ Chapter 2.1400.5 *supra* note 41.

⁴⁵ OWCP actually referred to the Board's October 31, 1991 decision affirming the termination of appellant's compensation benefits. However, OWCP has no jurisdiction to review a Board decision. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(d). Appellant had 30 days from the date of the Board's October 31, 1991 decision to file a petition for reconsideration with this Board of its decision. *Id.* at § 501.7. *See also B.B.*, Docket No. 14-0464 (issued June 4, 2014).

evidence or argument as to whether it was sufficient to demonstrate clear evidence of error. It specifically indicated that “the basis for this decision is outlined in the enclosure.” However, OWCP did not enclose the basis for the decision. As such, the Board is precluded from reviewing this decision.

The Board will therefore set aside OWCP’s April 25, 2019 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant’s untimely reconsideration request.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing June 5, 1988, causally related to her accepted August 12, 1987 employment injury. The Board further finds that OWCP improperly adjudicated appellant’s request for reconsideration from the denial of her claim for a recurrence of disability before her simultaneous request for an oral hearing. The Board also finds that the case is not in posture for decision with regard to whether OWCP properly denied appellant’s request for reconsideration of her termination decision as untimely filed and failing to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2019 decision of the Office of Workers’ Compensation Programs is affirmed.

IT IS FURTHER ORDERED THAT the April 25, 2019 decision of OWCP is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 5, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees’ Compensation Appeals Board

Janice B. Askin, Judge
Employees’ Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees’ Compensation Appeals Board